

ASSEMBLY BILL

No. 809

Introduced by Assembly Member Harman

February 20, 2003

An act to amend, repeal, and add Section 25128 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 809, as introduced, Harman. Bank and corporation taxes: apportionment: business income.

The Bank and Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, including extractive, savings and loan, banking and financial business activities, business income is apportioned in accordance with a specified 3-factor formula.

This bill would require, for taxable years beginning on or after January 1, 2005, unless certain requirements are not met by the taxpayer, that business income be apportioned to this state by multiplying the business income by the sales factor, except that with respect to a certain qualified business activity, a trade or business would be allowed to apportion its business income based upon the revised formula or in accordance with the 3-factor formula, as provided.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25128 of the Revenue and Taxation
2 Code is amended to read:
3 25128. (a) Notwithstanding Section 38006, *for taxable years*
4 *beginning before January 1, 2005*, all business income shall be
5 apportioned to this state by multiplying the business income by a
6 fraction, the numerator of which is the property factor plus the
7 payroll factor plus twice the sales factor, and the denominator of
8 which is four, except as provided in subdivision (b) or (c).
9 (b) If an apportioning trade or business derives more than 50
10 percent of its “gross business receipts” from conducting one or
11 more qualified business activities, all business income of the
12 apportioning trade or business shall be apportioned to this state by
13 multiplying business income by a fraction, the numerator of which
14 is the property factor plus the payroll factor plus the sales factor,
15 and the denominator of which is three.
16 (c) For purposes of this section, a “qualified business activity”
17 means the following:
18 (1) An agricultural business activity.
19 (2) An extractive business activity.
20 (3) A savings and loan activity.
21 (4) A banking or financial business activity.
22 (d) For purposes of this section:
23 (1) “Gross business receipts” means gross receipts described
24 in subdivision (e) of Section 25120 (other than gross receipts from
25 sales or other transactions within an apportioning trade or business
26 between members of a group of corporations whose income and
27 apportionment factors are required to be included in a combined
28 report under Section 25101, limited, if applicable, by Section
29 25110), whether or not the receipts are excluded from the sales
30 factor by operation of Section 25137.
31 (2) “Agricultural business activity” means activities relating
32 to any stock, dairy, poultry, fruit, furbearing animal, or truck farm,
33 plantation, ranch, nursery, or range. “Agricultural business
34 activity” also includes activities relating to cultivating the soil or
35 raising or harvesting any agricultural or horticultural commodity,

1 including, but not limited to, the raising, shearing, feeding, caring
2 for, training, or management of animals on a farm as well as the
3 handling, drying, packing, grading, or storing on a farm any
4 agricultural or horticultural commodity in its unmanufactured
5 state, but only if the owner, tenant, or operator of the farm
6 regularly produces more than one-half of the commodity so
7 treated.

8 (3) “Extractive business activity” means activities relating to
9 the production, refining, or processing of oil, natural gas, or
10 mineral ore.

11 (4) “Savings and loan activity” means any activities
12 performed by savings and loan associations or savings banks
13 which have been chartered by federal or state law.

14 (5) “Banking or financial business activity” means activities
15 attributable to dealings in money or moneyed capital in substantial
16 competition with the business of national banks.

17 (6) “Apportioning trade or business” means a distinct trade or
18 business whose business income is required to be apportioned
19 under Sections 25101 and 25120, limited, if applicable, by Section
20 25110, using the same denominator for each of the applicable
21 payroll, property, and sales factors.

22 (7) Paragraph (4) of subdivision (c) shall apply only if the
23 Franchise Tax Board adopts the Proposed Multistate Tax
24 Commission Formula for the Uniform Apportionment of Net
25 Income from Financial Institutions, or its substantial equivalent,
26 and shall become operative upon the same operative date as the
27 adopted formula.

28 (8) In any case where the income and apportionment factors of
29 two or more savings associations or corporations are required to
30 be included in a combined report under Section 25101, limited, if
31 applicable, by Section 25110, both of the following shall apply:

32 (A) The application of the more than 50 percent test of
33 subdivision (b) shall be made with respect to the “gross business
34 receipts” of the entire apportioning trade or business of the group.

35 (B) The entire business income of the group shall be
36 apportioned in accordance with either subdivision (a) or (b), as
37 applicable.

38 (e) *This section shall remain operative only until December 31,*
39 *2005, and as of that date is repealed.*

SEC. 2. Section 25128 is added to the Revenue and Taxation Code, to read:

25128. (a) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2005, all business income shall be apportioned to this state by multiplying the business income by the sales factor, as defined in Section 25134, except as provided in subdivision (b) or (d).

(b) Notwithstanding subdivision (a), a taxpayer (other than a taxpayer described in subdivisions (f) or (g)) shall apportion all business income to this state by multiplying the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four, provided its sales factor for the taxable year is less than the average of its payroll and property factors and it fails to meet both of the following:

(1) Its average number of employees in this state during the taxable year is at least 90 percent of the average number of employees employed in this state during the preceding five taxable years.

(2) Any percentage decline in the number of employees in this state between the current and immediately preceding taxable year is less than or equal to any corresponding, cumulative percentage decline with respect to all other states in which the taxpayer is engaged in business.

(c) For purposes of paragraphs (1) and (2) of subdivision (b), the payroll and employees of a member of a combined group that is acquired or disposed of during the taxable year may not be considered for the prior taxable years.

(d) A taxpayer not meeting the requirements of paragraphs (1) and (2) of subdivision (b) shall nonetheless apportion its business income according to subdivision (a) if the failure to meet any of those requirements is due to a natural disaster or other act of God, act of terrorism, or on action of federal, state, or local government. “Action of federal, state, or local government” does not include enforcement efforts directed at the illegal or fraudulent activities of the taxpayer.

(e) The determinations under subdivision (b) shall be made for each taxable year.

(f) (1) If an apportioning trade or business derives more than 50 percent of its “gross business receipts” from conducting an

1 extractive business activity, the taxpayer may elect on a timely
2 filed original return to apportion all business income of the
3 apportioning trade or business to this state either pursuant to
4 subdivision (a) or by multiplying business income by a fraction,
5 the numerator of which is the property factor plus the payroll
6 factor plus the sales factor, and the denominator of which is three.

7 (2) The one-time election of the apportionment formula shall
8 be made by contract with the Franchise Tax Board in the original
9 return for a year. The Franchise Tax Board shall prescribe the form
10 and manner of making the election. No election of the
11 apportionment formula may be made for a taxable year beginning
12 prior to January 1, 2005.

13 (3) An election of the apportionment formula may be
14 terminated by the taxpayer if either of the following occurs:

15 (A) The taxpayer is acquired directly or indirectly by a
16 nonelecting entity that alone or together with those affiliates
17 included in its combined report is larger than the taxpayer as
18 measured by equity capital.

19 (B) With the permission of the Franchise Tax Board.

20 (g) If an apportioning trade or business derives more than 50
21 percent of its “gross business receipts” from conducting a savings
22 and loan activity or a banking or financial business activity, all
23 business income of the apportioning trade or business shall be
24 apportioned to this state by multiplying business income by a
25 fraction, the numerator of which is the property factor plus the
26 payroll factor plus the sales factor, and the denominator of which
27 is three.

28 (h) For purposes of this section:

29 (1) “Gross business receipts” means gross receipts described
30 in subdivision (e) of Section 25120 (other than gross receipts from
31 sales or other transactions within an apportioning trade or business
32 between members of a group of corporations whose income and
33 apportionment factors are required to be included in a combined
34 report under Section 25101, limited, if applicable, by Section
35 25110), whether or not the receipts are excluded from the sales
36 factor by operation of Section 25137.

37 (2) “Extractive business activity” means activities relating to
38 the production, refining, or processing of oil, natural gas, or
39 mineral ore.

1 (3) “Apportioning trade or business” means a distinct trade or
2 business whose business income is required to be apportioned
3 under Sections 25101 and 25120, limited, if applicable, by Section
4 25110, using the same denominator for each of the applicable
5 payroll, property, and sales factors.

6 (4) In any case where the income and apportionment factors of
7 two or more corporations are required to be included in a combined
8 report under Section 25101, limited, if applicable, by Section
9 25110, both of the following apply.

10 (A) The more than 50 percent test, as described in subdivision
11 (f) or subdivision (g), applies with respect to the “gross business
12 receipts” of the entire apportioning trade or business of the group.

13 (B) The entire business income of the group is apportioned in
14 accordance with a subdivision (a), (b), (f), or (g), as applicable.

15 (5) “Taxpayer” means the aggregation of all persons filing a
16 single combined report as permitted or required by the Franchise
17 Tax Board pursuant to Section 25101.

18 (i) Any change in the apportionment formula caused by this
19 section, including any changes in the apportionment formula
20 provided under subdivision (b), is not a consideration for granting
21 a change of the water’s-edge election pursuant to subdivision (b)
22 of Section 25111.

23 (j) If any word, phrase, or other provision of this section is
24 found unconstitutional or otherwise unenforceable in a reported
25 opinion of a California appellate court, the remaining provisions
26 of this section shall remain in force and effect.

27 (k) This section shall become operative on January 1, 2005.

28 SEC. 3. Section 25128 of the Revenue and Taxation Code, as
29 amended by this act, may not be construed to affect or modify
30 Section 25136 of the Revenue and Taxation Code and the
31 regulations promulgated thereunder.

32 SEC. 4. This act provides for a tax levy within the meaning of
33 Article IV of the Constitution and shall go into immediate effect.

